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The right to food

Note by the Secretary-General**

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur of the Commission on Human Rights on the right to food, Jean Ziegler, in accordance with General Assembly resolution 56/155 of 15 February 2002.

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** The present report was submitted beyond the deadline as the Special Rapporteur had to wait for responses to requests for clarification of certain information contained in the report.

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Report of the Special Rapporteur of the Commission on Human Rights on the right to food

Summary

The right to food is a human right that is protected by international law. It is the right to have regular, permanent and unobstructed access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and ensuring a physical and mental, individual and collective, fulfilling and dignified life free from anxiety. Governments have a legal obligation to respect, protect and fulfil the right to food.

Yet hunger and chronic malnutrition still sentence millions of people to underdevelopment and early death. More than 815 million people still suffer from hunger and chronic malnourishment. About 36 million people die from hunger directly or indirectly every year. Every seven seconds a child under 10 years of age dies from the direct or indirect effects of hunger. Malnourishment handicaps children for life — brain cells do not develop, bodies are stunted, and blindness and diseases become rife. The hungry are condemned to a marginal existence of hunger and poverty that is passed on through generations.

All this happens in a world that is richer than ever before and already produces more than enough food to feed the global population. Hunger is not a question of fate; hunger is the result of human action or inaction. The disappointing conclusion of the World Food Summit: five years later was that little action has been taken to meet the commitment to halve the number of victims of hunger by 2015. Little progress was achieved in Rome — except for some small, but path-breaking, developments in the final Declaration of the Summit. In the Declaration, Governments acknowledged the right to food and agreed to draft a set of voluntary guidelines aimed at the realization of the right to food. The Special Rapporteur believes that if the concept of the right to food can be strengthened through this process, then Governments will increasingly be held accountable for the promises they make at international summits, as taking action to reduce hunger becomes a legal obligation, not simply a policy choice.

While the Special Rapporteur believes that international cooperation is fundamental, the primary obligation to realize the right to food rests with national Governments. At this level, access to land is fundamental, and agrarian reform must be a key part of Government strategies aimed at reducing hunger. In many parts of the world, people are struggling to survive because they are landless or because their properties are so small that they cannot make a decent living. Agrarian reform must be just, fair and transparent.

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I. Introduction

1. The mandate of the Special Rapporteur on the right to food was defined by the Commission on Human Rights in its resolution 2000/10 of 17 April 2000 and resolution 2001/25 of 20 April 2001. In fulfilling his mandate, the Special Rapporteur has reported on his activities by submitting two general reports and one country mission report (on the Niger) to the Commission on Human Rights, and two reports to the General Assembly. Through his reports, the Special Rapporteur aims to build up a cumulative body of work, with each report building on the conceptual and practical advances of the previous one.

2. For the purposes of the present report, the Special Rapporteur reaffirms the authoritative definition of the right to food in General Comment 12 of the Committee on Economic, Social and Cultural Rights, which states that "The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement."[1] Inspired by the General Comment, the Special Rapporteur further defines the right to food as follows:

> "The right to food is ... the right to have regular, permanent and free access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear."[2]

3. Despite increasing recognition of the right to food, there are still 815 million people suffering from the ravages of hunger and chronic, severe malnourishment every day.[3] According to the estimates of the Food and Agriculture Organization of the United Nations (FAO), the majority of hunger victims (777 million people) live in developing countries, with 27 million in transitional countries and 11 million in the industrialized countries. More than 33 per cent of Africa's youngest children suffer from the effects of permanent, severe, chronic undernourishment in the form of stunted physical growth. In South Asia, almost one in every four Asians suffers from chronic malnourishment, and 70 per cent of the world's stunted children live in Asia. Around the world, one child under the age of 10 dies every seven seconds directly or indirectly from hunger.[4] Most child mortality is directly attributable to malnutrition-related disease.

4. At the time of the writing of the present report, in July 2002, 10.2 million people in southern Africa are threatened with famine.[5] Serious famine or severe food shortages are already occurring in Malawi, Zambia, Zimbabwe, Lesotho and Angola. According to FAO, 16 countries in Africa are facing food emergencies in 2002, ravaged by drought, floods and war.[3] Elsewhere, the food situation is grave in the Democratic People's Republic of Korea, Afghanistan and Mongolia, and is worrying in Chechnya and the occupied Palestinian territories. People in Argentina, El Salvador, parts of Guatemala and the small States of the Cook Islands and Tonga are also suffering from shortages of food.

5. At the time of writing, the World Food Summit: five years later has just been concluded in Rome. The clearest, and most shocking, conclusion of the Summit was that little progress has been made in meeting the 1996 World Food Summit goal of halving the number of victims of hunger and grave chronic malnourishment by 2015. In many countries, particularly in Africa, the situation is deteriorating rather than improving. Over the last six years, hunger has increased in Afghanistan, Bangladesh, the Democratic Republic of the Congo, India, Iraq, Kenya, the Democratic People's Republic of Korea, the United Republic of Tanzania and Uganda. Yet hunger is not unique to developing countries: many developed countries also admit the existence of food insecurity among their own poorest populations.

6. Despite the fundamental importance of eradicating hunger, little progress was achieved at the Summit. However, there are some small, but path-breaking, positive elements in the final Declaration of the Summit that give rise to hope. The present report first reviews developments at the World Food Summit: five years later. It then explores access to land and agrarian reform as a key strategy to ensure the right to food, particularly in developing countries. Finally, the Special Rapporteur offers a set of conclusions and recommendations.

II. The World Food Summit: five years later

7. The Special Rapporteur was requested by the General Assembly and the Commission on Human Rights, "to contribute effectively to the medium-term

review of the implementation of the Rome Declaration on World Food Security and the Plan of Action of the World Food Summit".[6] To fulfil this request, the Special Rapporteur prepared a series of recommendations and submitted a statement to the Office of the United Nations High Commissioner for Human Rights and to the secretariat of FAO prior to the World Food Summit: five years later. He also attended the Summit in Rome in his capacity as Special Rapporteur on the right to food. FAO organized a side event on the right to food, with the Special Rapporteur as the keynote speaker. This section reviews the current situation, progress since 1996 and developments at the Summit.

8. The World Food Summit: five years later was held in Rome in June 2002 to review progress on the commitments made at the 1996 World Food Summit. The key commitment made by Governments in 1996 was to halve the number of victims of hunger by 2015. However, the clearest, and shocking, conclusion of the 2002 Summit was that little progress has been made in meeting this goal. Five years later there are still 815 million hungry people, according to FAO. At the current slow rate of progress, it will take until at least 2030 to meet the goal of halving hunger.[7] Yet the situation is even worse than the aggregate statistics suggest. If the impressive progress of China is taken out of the figures, world hunger has increased since 1996. According to the International Food Policy Research Institute, without counting China, the number of food-insecure or chronically malnourished people increased by 40 million in the 1990s. Countries where the number of malnourished people increased include Afghanistan, Bangladesh, the Democratic Republic of the Congo, India, Iraq, Kenya, the Democratic People's Republic of Korea, the United Republic of Tanzania and Uganda. In Africa, the situation in most countries is worse today than it was 10 years ago.[8] On average, a third of all people in the countries of sub-Saharan Africa suffer from chronic severe hunger and malnourishment. FAO reports that, of the 91 countries that reported on their implementation of the 1996 commitments, "few, if any" could claim substantive progress.[9]

9. Despite the fundamental importance of eradicating hunger, only two member countries of the Organisation for Economic Cooperation and Development (OECD) were represented at the Summit by Prime Ministers, although many developing countries were represented by Heads of State or Prime Ministers. The final Declaration of the Summit,[10] adopted after three days of intense negotiations, was disappointing in terms of the solutions proposed for world hunger, and it recognized that the goal of halving hunger by 2015 is unlikely to be attained at the current rate of progress. Few concrete solutions to speed up action were proposed, except for stimulating free trade and biotechnological progress. However, these elements proved to be highly controversial in the negotiations between representatives of various Governments, because of their different assessments of their potential impacts on hunger. The concept of the right to food was also hotly debated in the negotiations on the final Declaration. There was pressure from some Governments to replace the concept of the right to food with the concept of food security. However, as the Special Rapporteur has previously noted, the concept of the right to food is much stronger than the concept of food security. The right to food includes all the elements of food security — including availability, accessibility and utilization of food — but it also goes beyond the concept of food security because it emphasizes accountability. A rights-based approach focuses attention on the fact that making progress to reduce hunger is a legal obligation, not just a preference or choice.

10. Eventually, after intense negotiation, the right to food was reaffirmed in the final Declaration, and Governments agreed to draw up a set of voluntary guidelines on the right to food. The final Declaration reaffirms in its third preambular paragraph "the right of everyone to have access to safe and nutritious food", and in paragraph 10 calls for the establishment of an intergovernmental working group to elaborate over the next two years a set of "voluntary guidelines ... to achieve the progressive realization of the right to adequate food". These important developments represent small seeds of hope in the fight against hunger. The Special Rapporteur recognizes the efforts of a number of countries and groups, particularly the Group of 77, Norway, Switzerland, Germany, France, Cuba and Venezuela, in fighting for the inclusion of the right to food and voluntary guidelines on the right to food.

11. Although the voluntary guidelines are not the code of conduct that many States and non-governmental organizations have been fighting for, this is still an important step forward. The process of

drawing up the guidelines has the potential to strengthen Governments' understanding of the right to food. The elaboration of such guidelines will provide an important space for reaffirming the importance of human rights in the fight against hunger and malnutrition and for developing a better understanding of international obligations with respect to the right to food. This process will also provide an important forum for discussion and sharing of experiences to fight hunger and to clarify the right to food, as promised in objective 7.4 of the 1996 Plan of Action. In the opinion of the Special Rapporteur, the guidelines could be as important as a code of conduct if the content of the guidelines gives them effective force and real relevance. The Special Rapporteur is grateful to have been invited by FAO to contribute to the elaboration of the guidelines over the next two years.[11]

12. What should be done over the next two years to establish these guidelines? Paragraph 10 of the final Declaration states that the guidelines must be achieved by FAO in close collaboration with the relevant treaty bodies, agencies and programmes of the United Nations system. The role and full participation of the Office of the United Nations High Commissioner for Human Rights will be fundamental, as the guidelines must be fully anchored in human rights. The guidelines must also be established with the full participation of all stakeholders. This means that States, as well as other actors, including private actors and non-governmental organizations, will have a crucial role to play. It is imperative that there be a full participatory process in the elaboration of the guidelines.

13. The suggestions made by the participants at the special event on the right to food organized by FAO at the World Food Summit will provide a useful guide for the content of the guidelines. The suggestions include:[12]

(a) Reaffirmation of existing legal obligations:

(i) Emphasizing General Comment 12 of the Committee on Economic, Social and Cultural Rights;

(b) International obligations of States:

(i) Obligations at the national level;

(ii) Extranational obligations of States;

(c) Practical guidelines for national implementation:

(i) Framework law;

(ii) Legislation;

(iii) Implementation strategy;

(iv) Benchmarks and indicators;

(v) Monitoring mechanisms;

(vi) Remedies and accountability;

(d) International obligations and responsibilities of other actors:

(i) International organizations;

(ii) Private actors;

(iii) Non-governmental organizations;

(e) Monitoring provisions:

(i) Mechanism of the Committee on Food Security to monitor compliance;

(ii) Use of existing monitoring mechanisms, such as the Committee on Economic, Social and Cultural Rights.

14. National obligations must be the primary focus of these guidelines, given that the key responsibility to respect, protect and fulfil citizens' right to food rests with national Governments. However, it will also be fundamental to consider the obligations and responsibilities of non-State actors, including international organizations and private actors. In addition, it will be vital to examine the extranational obligations of States (i.e. the obligations of States towards citizens of other countries). The Special Rapporteur will develop the conceptual and practical understanding of both of these new and important areas in his next report to the Commission on Human Rights. He will explore the issues of the obligations and responsibilities of non-State actors — international organizations such as the World Bank and the International Monetary Fund, and private actors such as transnational corporations — under international human rights law. He will also examine the extranational obligations implied in international human rights law under which States must respect the right to food of citizens of other countries.

15. In relation to extranational obligations, it is clear, for example, that urgent attention must be paid to the effects of State action on citizens of other countries. In an increasingly globalized world, the actions of one

Government can often have repercussions on the right to food of people in another country. This is particularly clear in international agricultural trade. In international human rights law, there is already a clear basis for such extranational obligations. Of all human rights, the right to food is already the subject of one of the clearest and strongest commitments to international cooperation under international human rights law.[13] The Committee on Economic, Social and Cultural Rights has also stated that "States parties should take steps to respect the enjoyment of the right to food in other countries, to protect that right, to facilitate access to food and to provide the necessary aid when required."[14]

16. The Special Rapporteur will work to define extranational obligations in his next report, on the basis of the obligations to respect, protect and fulfil the right to food. In the context of extranational obligations, the obligation to respect the right to food would mean, for example, that States must not take actions that would have a negative impact on the right to food of people in another country and should ensure that their trade relations do not violate the right to food of people in other countries. The obligation to protect implies that States have a duty to regulate their companies and corporations that operate in other countries to prevent violations. The obligations to facilitate access to food and to provide necessary aid when required are also important, but are the most controversial. The Special Rapporteur believes that at a minimum, States should fulfil the commitments they have made in terms of development assistance. For example, although States reaffirmed at the 1995 World Summit for Social Development, in Copenhagen, the goal of providing 0.7 per cent of gross national product for development assistance, few States have taken this commitment seriously. Between 1990 and 1999, the proportion of gross national product spent on development assistance in fact fell from 0.33 per cent to 0.25 per cent in OECD countries.[9] Only a few countries have achieved the goal of 0.7 per cent, notably the Netherlands, Sweden, Denmark, Norway and Luxembourg.

17. The Committee on Economic, Social and Cultural Rights has also stated that international obligations under the right to food mean that States "should refrain at all times from food embargoes or similar measures which endanger conditions for food production and access to food in other countries. Food should never be used as an instrument of political and economic pressure."[15] In the 1993 Vienna Declaration on human rights, States parties reaffirmed that "food should not be used as a tool for political pressure".[16] The Special Rapporteur believes that this principle must be upheld at all times. He believes for example, that the long-standing unilateral blockade against Cuba is a violation of this obligation. This was also the opinion of the General Assembly last year, when, by 173 votes to 3, for the tenth year in a row it adopted a resolution condemning the unilateral sanctions against Cuba and calling for an end to the trade embargo. The food situation in Cuba has become even more difficult in the post-11 September period, as Cuba has been placed under the "axis of evil" label and the embargo has been reinforced.[17]

18. The Special Rapporteur believes that the voluntary guidelines must clarify the obligations of States both towards their own citizens and towards citizens of other countries (extranational obligations), as well as the obligations of non-State actors. The process of drawing up the guidelines will therefore become an important part of developing an understanding of the right to food. The Special Rapporteur recognizes that some States and many non-governmental organizations were disappointed that their proposal for an international code of conduct was rejected in favour of a rather weaker compromise on voluntary guidelines, but believes that these guidelines could be equally as effective.

19. The Special Rapporteur recognizes some weaknesses in the final Declaration of the Summit, particularly the emphasis on free trade and biotechnology as key ways of reducing hunger. Free trade and biotechnology by themselves are unlikely to solve the problem of world hunger and can sometimes be obstacles to the realization of the right to food, as the Special Rapporteur has explained in previous reports. Free trade and biotechnology were both bitterly criticized by the non-governmental organizations and social movements from all around the world gathered at the civil society meeting NGO/CSO Forum on Food Sovereignty, which was held in parallel with the official 2002 Summit in Rome. These social movements and non-governmental organizations put forward alternative potential policy options, including small-scale farming, local production, agroecological methods and the concept of food sovereignty. The Special Rapporteur believes that these proposals must be given greater attention at the

international level if the question of hunger in the world is to be seriously addressed. He advocates the concept of food sovereignty as defined by the NGO/CSO Forum on Food Sovereignty.

20. The Forum defined the concept of food sovereignty with a focus on several key elements. These include promoting food production for domestic and local markets using agroecological peasant and family farming; ensuring fair prices; ensuring access to land and other vital resources; recognizing women's role in food production; access to resources; promoting community control over productive resources; protecting seeds from patenting; encouraging a moratorium on genetically modified crops, given the risk of affecting genetic diversity; and increasing public investment to support the empowerment and productive activities of families and communities.[18]

21. If hunger and chronic malnutrition in the world are really to be addressed, and States are to meet the commitments they have made, this alternative model provides important guidance. The Special Rapporteur will examine the concept of food sovereignty in greater detail in his upcoming reports. It is clear, however, that putting people's right to food and food production first will be fundamental if hunger is to be reduced. Access to land, one of the fundamental components of this model, is examined in the section III below.

III. Access to land, agrarian reform and the right to food

22. The Special Rapporteur believes that access to land is one of the key elements necessary for eradicating hunger in the world. This means that policy options such as agrarian reform must play a key part in countries' food security strategies, in which access to land is fundamental. Too often, agrarian reform is dismissed as an outdated and ineffective policy option, but the evidence does not bear this conclusion out.

23. Hunger, like poverty, is still predominantly a rural problem. Of the 1.2 billion people who suffer from extreme poverty in the world today, 75 per cent live and work in rural areas.[19] Many rural people suffer from hunger because either they are landless, they do not hold secure tenure or their properties are so small that they cannot grow enough food to feed themselves. Approximately 100 million agricultural households, or 500 million people, are landless in less developed countries.[20] These 500 million landless people are among the poorest on earth. They constitute high proportions of the agricultural population of India, Bangladesh, Pakistan, the Philippines, Indonesia, South Africa, Kenya, Zimbabwe, Malawi, Brazil, Guatemala, Honduras, and several other countries.[20] Most of these people work as tenant farmers or agricultural labourers, lacking ownership or owner-like tenure on the land that they farm. Tenant farmers usually have to pay high rents and have little security of possession from season to season. Agricultural labourers usually work for extremely low wages and often have to migrate from one insecure, informal job to another.[19]

24. Rural poverty is often closely linked to extreme inequality in access to land.[19] Access to land is often fundamental for ensuring access to food and to a livelihood, and therefore freedom from hunger. Yet in many countries, land ownership is highly concentrated. In some cases, part of this land may even be left unproductive. In Brazil, for example, 2 per cent of landowners own 56 per cent of all private land, and much of this land is unused, or used minimally as pastureland.[21] Although land concentration is often the result of the historical legacies of colonialism, slavery and exploitation, these historically produced inequalities often persist today, given the resistance of landholding elites to redistribution and agrarian reform programmes. The persistence of extreme concentration of land ownership and high levels of inequality has particularly damaging effects in most of the developing countries, where land (together with labour) is the fundamental factor of production.

25. Agrarian reform programmes, when they have contributed to genuinely transformative change, have been very successful in reducing poverty and inequality in many countries. Agrarian reforms in Japan, the Republic of Korea, Taiwan Province of China, China and Cuba are recognized to have had a significant impact on reducing poverty and hunger and increasing economic growth.[19] Agrarian reforms have proved most successful when land reform radically reduces inequalities in land distribution and is accompanied by sufficient access to other inputs, and when political obstacles to reform have been overcome. Secure property titles, accurately maintained land records, and efficient and fair land administration bureaucracies that are adequately funded and not corrupt have also been essential elements in successful reforms.[22] It is also clear that in agrarian reform, land in itself is not

enough. Often the quality of land is just as important for a viable livelihood as the quantity. Access to land must also always be accompanied by sufficient access to other inputs, including water, credit, transport, extension services and other infrastructure.

26. While the "death" of agrarian reform was proclaimed in the 1970s, and few efforts were made to conduct land reform programmes in the 1980s and early 1990s, more recently land reform has come back onto the international agenda.[23] Social movements have been a key force behind this re-emergence of land reform. As FAO points out, "first and foremost land reform is back on the agenda because rural populations have put it there".[22] Landless movements across the third world, and highly visible land conflicts in Zimbabwe, South Africa, Colombia, Brazil, Mexico, the Philippines, Indonesia and elsewhere, have brought land reform back to centre stage.[24] Non-governmental organizations fighting hunger, such as Food First and the Food First Information and Action Network, argue that "access to farm land is a fundamental human right for rural peoples, and that grossly inequitable distribution of land is one of the most common underlying causes of poverty and destitution in much of the world".[24] A report of FAO recognizes that there are now "new demands on the social contract between rural citizens and their government — the demand for rights. ... Indeed, most of the land reform movements generated at the grass roots are an assertion of the rights already guaranteed in national law and legislation, but never effectively applied."[22]

27. Land reform is back on the agenda also because there has been greater recognition of its economic and political benefits. According to the International Fund for Agricultural Development (IFAD), land reform has demonstrably reduced poverty where it has been conducted successfully, and greater equality in landholding is associated with faster overall growth.[19] It also helps to reduce vulnerability to famine and hunger. It is now also increasingly clear that agricultural productivity is greater on small farms than on larger ones. Although large farms can benefit from economies of scale, it is a myth that small farms are less productive. According to a World Bank report, "data show a deep decline in income per acre as farm size increases, with productivity of the largest size category less than half that of the smallest."[25] Farmers with ownership or secure tenure are also more likely to invest in their land, which improves environmental conservation. The World Bank has also recognized the importance of reducing inequality around the world, and suggests that States must engage in active measures of redistribution, such as land reform, "a classic form of redistribution that can be very effective".[26]

28. Small-scale farms tend to use more labour than high-technology, mechanized large farms, thereby generating greater agricultural employment. This in turn generates improved non-agricultural opportunities, as a broad base of agricultural families benefiting from land reform receive higher incomes and enter the marketplace to purchase a range of locally produced goods and services.[20] Many studies argue that only land reform holds the potential to address chronic unemployment in many developing countries.[24] As small farms employ more labour and are less highly capital intensive, only land reform will be able to reduce rapid urbanization and reverse migration from rural areas to urban areas. In Brazil, a study by the Brazilian Institute of Social and Economic Analysis calculated that the cost to the Brazilian Government of maintaining people in the urban slums, or favelas — including services and infrastructure — would exceed in one month the yearly cost of legalizing land occupations through purchase and expropriation of the land.[24] The potential costs of agrarian reform should therefore be weighed against other costs, including urban unemployment and increasing social conflicts.

29. It is now widely agreed that land reforms in Japan, the Republic of Korea, Taiwan Province of China, China and Cuba have had a significant impact on reducing poverty and hunger and increasing economic growth.[27] In India, the states with the steepest declines in poverty from 1958 to 1992 were those that implemented land reform.[19] In general, based on the evidence of agrarian reforms instituted in more than 60 countries since the end of the Second World War, land reform has worked when reforms have been genuinely transformative and genuinely redistributive, when quality land has really been distributed to the poor and when rural power structures have been broken. In contrast, reforms that have given only poor-quality land to beneficiaries or have failed to alter the rural power structures that work against the poor have failed to have a significant impact on inequality, poverty or hunger.[24] In much of Latin America, for example, while land reform programmes have benefited a substantial number of poor rural families,

in many countries they have not been transformative, as Governments have been unable or unwilling to implement the extensive reforms seen in Asia (with the exception of Cuba and new reforms in Venezuela). Latin America still has one of the most inequitable distributions of land in the world.[22]

30. Access to land and agrarian reform must form a key part of the right to food. The legal basis for this is already clear in the text of the International Covenant on Economic, Social and Cultural Rights. Under article 11, paragraph 2 (a), States are committed to "developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources". Given that it is becoming increasingly understood that small farms are more efficient than large ones and better protect the environment,[19] this can be understood as promoting agrarian reform to encourage small-scale farming. General Comment 12, the authoritative interpretation of the right to food by the Committee on Economic, Social and Cultural Rights, clarifies that the right to food requires physical and economic access to resources. The Comment recognizes that access to food comes from either access to income or access to productive resources such as land. It argues that vulnerable people, including landless people, need special attention and that indigenous peoples and women should be entitled to the right to inheritance and ownership of land. It is also clear that Governments must respect, protect and fulfil access to land. The Government obligation to respect the right to food means that the State should not take any action that would affect access to food. Therefore, eviction from land without adequate compensation would constitute a violation of the right to food.[28]

31. The rights of women to land and property are also protected in the Convention on the Elimination of All Forms of Discrimination against Women. Article 14.2 prohibits discrimination against women in rural areas and calls for equal treatment in land and agrarian reform. Article 16.1 (h) calls for equal rights in terms of the ownership of property. Nonetheless, despite enjoying legal and often constitutional rights in many countries, women still face severe obstacles to the inheritance, purchase and control of land, even though it is now widely agreed that women produce 60 to 80 per cent of food crops in developing countries and play a crucial role in the food security of households.[29] In addition, land distribution programmes still often assume that recipients will be men, not women. This must be changed if agrarian reforms are to be successful. Traditional forms of land tenure and use rights must also be better recognized and understood. The rights of indigenous peoples to land are protected by articles 13 to 19 of the 1989 International Labour Organization Convention concerning Indigenous and Tribal Peoples. Indigenous rights to land are also included under the right to food in General Comment 12 of the Committee on Economic, Social and Cultural Rights. There is also now a draft declaration on indigenous rights, being prepared by a Working Group of the Commission on Human Rights, which will give greater protection to indigenous rights to land when it comes into force. It is clear that land traditionally occupied and used by indigenous populations has frequently been appropriated, often through various forms of violence or discrimination, and that ways of guaranteeing effective protection for their rights of ownership and possession are fundamental.

32. Property rights are generally granted clear protection under the Constitutions and legislation of many countries. In many cases, however, a severe tension exists between the protection of property rights and the call for the right to land, access to land or agrarian reform. Protecting property rights can mean protecting large, concentrated landholdings, and therefore can constitute a challenge to agrarian reform. This legal tension is resolved in different ways in different countries. In article 5 of the Constitution of Brazil, for example, property rights are protected, but only to the extent that property fulfils its social function as defined in article 186. If the ownership of land does not meet this social function (which usually means that it is not being actively cultivated), then it may be expropriated by the State for the purpose of agrarian reform. Expropriated land must be given to rural labourers or to rural farmers who do not have access to sufficient land to feed themselves.[30]

33. Nonetheless, there are still problems in enforcing these distinctions between property rights and the right to land in Brazil, as the Special Rapporteur found on his mission to Brazil in March 2002.[31] The implementation of agrarian reform in Brazil has speeded up in recent years, but there still remain significant problems in translating constitutional obligations into practice. The pace of implementation of agrarian reform and the persistent resistance of the landholding elites in some regions of the country have

led to the emergence of one of the most important peasant movements to emerge in recent history, the Landless Workers Movement. The reasons for the slow pace of agrarian reform are multiple, but there are some that stand out. In some regions, for example, a quasi-feudal system persists, by which elites control vast tracts of land in order to maintain political power, although the land is often uncultivated. The Landless Workers Movement has increasingly tried to occupy land that is uncultivated and pressed for the application of the constitutional provision to allow the expropriation of land. However, the conservative judicial system often tends to rule in favour of the property rights of landholders and against the land rights claimed by the peasants, even when land is uncultivated, thus failing to recognize the social function provision of the Brazilian Constitution. A new law also limits the ability of the Landless Workers Movement to occupy land and demand expropriation, by stating that occupied land will not be considered for expropriation for at least two years after the end of the occupation.[32] Protests calling for agrarian reform are often repressed with force. While agrarian reform is understood as a duty of the Government, increasingly it is not seen as a right that rural workers can demand themselves.

34. For the people of the Landless Workers Movement, what is often at stake is not just the means of subsistence, but also the means to maintain a dignified life.[33] It is important to recognize, however, that in many countries large, land-owning farmers are not necessarily personally responsible for past land theft or appropriation, which may be rather the result of long historical processes. Therefore, it is important to recognize the property rights of these farmers and consider appropriate forms of compensation, while also recognizing the claims to land of the poor. In Zimbabwe, for example, rapid evictions and the lack of compensation are unlikely to promote sustainable land reform, particularly in the context of impending famine. However, it is clear that action in Zimbabwe and other countries to resolve extreme land inequality is essential if social conflict is to be reduced.

35. Despite the re-emergence of land reform on the international agenda, there are a number of contradictions that reflect what the Special Rapporteur has labelled "schizophrenia" in the United Nations system.[34] In the 1996 Declaration of the World Food Summit, land reform constituted a key part of stated commitments. Yet land reform is noticeable in its absence from the 2002 final Declaration of the World Food Summit: five years later. While IFAD and FAO broadly support agrarian reform models that promote transformative, redistributive reform, agencies such as the World Bank are, in contrast, promoting new models of agrarian reform that emphasize the market and are compatible with the "Washington consensus", a paradigm that is "inherently opposed to policy interventions aimed at achieving social equity".[35]

36. The World Bank's current "market-assisted" or "negotiated" models of land reform seek to overcome elite resistance to land reform by offering credit to landless or land-poor farmers so that they can buy land at market rates from large landholders, with the State playing a part only in mediation and the provision of credit.[24] These models have been bitterly criticized by non-governmental organizations and social movements that claim that they are undermining more transformative programmes of agrarian reform (e.g., in Brazil).[36] There are also concerns that offering credit to small farmers to purchase land at market prices cannot result in transformative, redistributive reform, as landowners benefit from often inflated prices for often low-quality land, while poor farmers are frequently left with debts that they can never fully repay. This model shifts the logic of agrarian reform away from a concept of a right to land and redistribution, towards the view that access to land is possible only through the purchase of the land at market prices, despite a context of historically produced inequities.

37. There are also concerns that many of the programmes for tenure reform undertaken by the World Bank and others — mapping, cadastres, land registers and individual title — have been implemented without trying to respond to local customary and traditional forms of land tenure, but rather with the aim only of creating conditions for functional land markets. This has frequently resulted in massive and progressive sales of land, the reconcentration of property and an increase in social conflict (as in, for example, the case of Egypt).[33]

38. The current market-fundamentalist macroeconomic model has also created environments in which small-scale agriculture is becoming unviable, making agrarian reform less viable. Trade liberalization and policies of structural adjustment in the agricultural sector have brought small-scale agriculture (in developing countries, though not in developed

countries that maintain subsidies) into direct competition with imports from markets where world prices are artificially low as a result of subsidies. The withdrawal of the State from the delivery of extension services and production support has also contributed to the further exclusion of marginalized groups from access to productive resources, as was evident in the Special Rapporteur's mission to the Niger.[37]

39. The Special Rapporteur also sees profound contradictions in the actions of some States that, for example, invoke free trade in agriculture as the key to reducing hunger, while at the same time increasing protectionism vis-à-vis their own agriculture. For example, within OECD countries, total agricultural support amounted to $335 billion in 1998,[38] and in May 2002 the Government of the United States of America announced a package that would increase subsidies to its (mainly corporate) farmers by $180 billion over the next 10 years.[39] It is clear that these actions contribute to the profound inequities within the current international trade system, with severe impacts on the realization of the right to food, particularly in developing countries.

40. While the market model can increase growth and food production, many of the poorest people remain without food. For example, Brazil is one of the largest food producers and exporters in the world, yet according to Government statistics, 22 million of its people still go hungry and chronically undernourished. What is important to realize, however, is that the loss of viability of small-scale agriculture is not an inevitable historical process, but is man-made. It is clear that granting access to land for small-scale farming is more productive, more ecologically viable and more socially sustainable than the current economic model being imposed. There is an urgent need to look at the concept of food sovereignty being proposed by non-governmental organizations, which challenges the existing model, and in which access to land and agrarian reform play a prominent role in reducing poverty and hunger.

41. Access to land is an essential element of the right to food. Extreme inequality in the distribution of land is a key factor in the persistence of hunger and poverty. Agrarian reform that is truly transformative and redistributive has proved to be fundamental in reducing poverty and hunger in many countries, and can be a key to generating economic growth that benefits the poorest. Agrarian reform is often recognized as a constitutional or legal right under national law, yet it is difficult to implement, given the resistance of the elites and an economic model that is inherently opposed to policy interventions directed towards greater social equity. The emerging model of "market-assisted" land reform, which fits into the predominant neoliberal model, is unlikely to have the same effects on hunger and poverty as the radical, redistributive and transformative model. In a context of rapid urbanization, mass urban unemployment and the resulting increase in social conflict and crime, it is increasingly urgent that agrarian reform be viewed as a viable alternative and be supported by macroeconomic policy.

42. Although agrarian reform can be costly, its costs will be less than those of rapid urbanization and mass urban unemployment, and less than the cost of the brutal, repressive police forces that are often used to suppress the instability and insecurity that they create. Meeting the right to food is an obligation of Governments, and the Special Rapporteur believes that the right to land, and transformative and genuinely redistributive land reform, must be a fundamental part of Government obligations under the International Covenant on Economic, Social and Cultural Rights to meet the right to food.

IV. Conclusions and recommendations

43. **It is an outrage that hunger and malnutrition still sentence millions of people to underdevelopment and early death. More than 815 million people still suffer from hunger and chronic malnourishment, and 36 million people die from hunger directly or indirectly every year. Every seven seconds a child under the age of 10 dies from the direct or indirect effects of hunger. Millions of others are born blind, crippled or mentally impaired. Malnourishment handicaps children for life — brain cells do not develop, bodies are stunted, blindness and diseases become rife. The hungry are condemned to a marginal existence of hunger and poverty, which is passed on through the generations.[40] Every year, tens of millions of seriously undernourished mothers give birth to tens of millions of seriously affected babies, whom Régis Debray has described as "crucified at birth".[41] The possibilities for people and whole countries to fulfil their economic potential are irreparably damaged.**

All this happens in a world that is richer than ever before and already produces more than enough food to feed the global population. Hunger is not a question of fate; hunger is the result of human action or inaction.

44. The most disappointing conclusion of the World Food Summit: five years later was that little progress has been made in reducing hunger, despite the 1996 commitments to halve hunger. The Special Rapporteur believes that this has its roots in the failure to question the impact of the current market-fundamentalist model and emphasis on trade-based food security. It also has roots in the failure to resolve profound internal contradictions in the United Nations system, where some United Nations agencies work to promote social justice, while the Bretton Woods institutions (along with certain Governments and the World Trade Organization), continue to advocate the "Washington consensus" even though it is becoming increasingly clear that this is not the answer to hunger and poverty.

45. The only small victory of the Summit was the recognition of the right to food, as a stronger concept than food security, as this makes addressing hunger a legal obligation, not just a policy choice. In addition, Governments agreed in the final Declaration to prepare a set of voluntary guidelines for the realization of the right to food.

46. The Special Rapporteur believes that more attention should be paid to the alternative models proposed by civil society, particularly the concept of food sovereignty. Access to land and agrarian reform, in particular, must be key elements of the right to food. Agrarian reform that is truly transformative and redistributive has proved to be fundamental in reducing poverty and hunger in many countries.

47. To conclude, the Special Rapporteur strongly recommends that:

(a) The voluntary guidelines on the right to adequate food, proposed in the final Declaration of the World Food Summit: five years later, be given effective force and enhance the accountability of Governments. The guidelines should be based on, but not undermine, General Comment 12 of the Committee on Economic, Social and Cultural Rights. They should outline the obligations of States at the national and extranational levels, as well as the obligations of non-State actors. The guidelines should provide mechanisms for monitoring, accountability and appropriate remediation. The guidelines should be elaborated through a participatory process, with the vital participation of the Office of the United Nations High Commissioner for Human Rights.

(b) Questions must be asked about the current development model based on the "Washington consensus". While this model is producing great riches around the world, the benefits are unevenly distributed. Inequality between countries is rapidly growing, and this model is clearly not solving the problems of hunger and poverty in the world.

(c) Profound internal contradictions within the United Nations system and in the actions of certain States must be reviewed. The obligations of States towards the populations of other countries, particularly their right to food, must be recognized. This suggests, for example, that trade relationships must be examined to ensure that the trade policy of one nation does not have negative effects on the right to food of people in other countries.

(d) The alternative models proposed by global civil society must be given greater attention if hunger in the world is to be seriously addressed, including the concept of food sovereignty, which puts the right to food above all other concerns, including international trade.

(e) Access to land must be recognized as a fundamental element of the right to food. Agrarian reform should be taken seriously as a policy instrument to reduce hunger and poverty. It should promote truly transformative and redistributive change involving not just land, but also the necessary elements to make reform viable, including access to water, credit, transport, extension services and other infrastructure. In many countries, agrarian reform and the right to land are already provided for in national law, which needs to be effectively applied and enforced. "Market-based" land reforms that undermine local legislation and constitutional commitments or undermine the possibility of a truly transformative and redistributive agrarian reform must be avoided.

(f) **The rights of women to access to land and to water must be recognized and guaranteed, given their key role in food security in households and in the production of food crops. It is essential to strengthen the rights of women to ensure the full realization of the right to food.**

(g) **All United Nations agencies, including the Bretton Woods institutions, must adopt a rights-based approach to their work to ensure that international human rights law is always respected.**

(h) **The decisive negotiations on agriculture and other issues currently under way in the Millennium round of the World Trade Organization must take the right to food into particular account and ensure that trade rules do not conflict with international human rights law, especially the right to food.**

(i) **Urgent action must be taken to meet the commitments made in 1996 at the World Food Summit. Time is not an abstract entity; time is human life. Each day that passes means the premature death, or the physical and mental deterioration, of women, children and men as a direct result of hunger and malnutrition. In a world that is overflowing with riches and food, this is a scandal. We must take action. As Alphonse de Lamartine wrote, "La liberté du faible est la gloire du fort".[42] The silent, daily massacre of hunger must be stopped.**

Notes

[1] E/C.12/1999/5, CESCR, para. 6.

[2] E/CN.4/2001/53, summary.

[3] FAO, *Assessment of the World Food Security Situation* (Rome, 2002), document produced for the session of the Committee on Food Security held from 6 to 8 June 2002; http://www.fao.org/DOCREP/MEETING/004/Y6441e/Y6441e00.HTM.

[4] WFP, *World Hunger Map* (Geneva, 2001).

[5] "WFP Launches Massive Regional Appeal As Starvation Threatens Millions"; http://www.wfp.org/index.asp?section=2.

[6] A/C.3/56/L.48, para. 10 and E/CN.4/2002/L.41, para. 9.

[7] FAO, *The State of Food Insecurity in the World 2000* (Rome, 2001).

[8] Per Pinstrup-Andersen, as reported by Inter Press Service News Agency, 29 May 2002, http://www.ipsnews.net/interna.asp?idnews=10008.

[9] FAO Committee on World Food Security, twenty-seventh Session: *Fostering the Political Will to Fight Hunger* (Rome, 2001).

[10] See the Declaration at http://www.fao.org/DOCREP/MEETING/004/Y6948E.HTM.

[11] Letter to the Special Rapporteur from Hartwig de Haenn, Under-Director General, Economic and Social Department, and Giuliano Pucci, Legal Counsellor, of FAO, 27 June 2002.

[12] These suggestions are based on Michael Windfuhr's proposals for the content of the proposed code of conduct.

[13] See the International Covenant on Economic, Social and Cultural Rights, article 11.

[14] E/C.12/1999/5, CESCR, para. 36. See also Philip Alston, "International Law and the Human Right to Food" in Alston and Tomasevski, *The Right to Food* (Boston, Martinus Nijhoff Publishers, 1984), pp. 44-45. Philip Alston uses the term "duty" and not "obligation".

[15] E/C.12/1999/5, CESCR, para. 37.

[16] Vienna Declaration and Programme of Action, part I, para. 31.

[17] See http://news.bbc.co.uk/hi/english/world/americas/newsid_1971000/1971852.stm and http://news.bbc.co.uk/hi/english/world/americas/newsid_1989000/1989723.stm.

[18] See http://www.forumfoodsovereignty.org/pressoffice/pressreleases/politicalstatement-ing.htm.

[19] IFAD, *Rural Poverty Report 2001: The Challenge of Ending Rural Poverty* (New York, Oxford University Press, 2001).

[20] Roy Prosterman and Tim Hanstad, "Land Reform: Neglected, Yet Essential" in Rural Development Institute Reports on Foreign Aid and Development No. 87 (Washington, 1995).

[21] Brazil Census of Agriculture, 1996.

[22] FAO, *Contemporary Thinking on Land Reforms* (Rome, 1998); http://www.fao.org/WAICENT/FAOINFO/SUSTDEV/LTdirect/LTan0037.htm.

[23] See David Lehman, *The death of land reform: a polemic*, cited in FAO, *Contemporary Thinking on Land Reforms*, op. cit.

[24] Peter Rosset, "Tides Shift on Agrarian Reform: New Movements Show the Way", in *Food First Backgrounder*, vol. 7:1 (2001); http://www.foodfirst.org/pubs/backgrdrs/2001/w01v7n1.html.

[25] K. Hoff, A. Braverman, and J. E. Stiglitz, editors, *The Economics of Rural Organization* (Oxford University Press for the World Bank, New York, 1993) p. 236.

[26] World Bank, *World Development Report 2000/2001: Attacking Poverty* (Oxford University Press, New York, 2001) p. 55.

[27] IFAD, op. cit.; FAO, *Contemporary Thinking*, op cit.; Rosset, op. cit.

[28] Sofia Monsalve Suárez, *Marcos legales y conflictos de tierras: análisis desde una perspectiva de derechos humanos* (unpublished paper). See also the Special Rapporteur's elaboration of the obligations to respect, protect and fulfil the right to food (A/56/210).

[29] FAO, *Gender and food security: Agriculture*; http://www.fao.org/Gender/en/agri-e.htm.

[30] Brazilian Law 8.629, 25 February 1993.

[31] The relevant report will be submitted to the United Nations Commission on Human Rights at its next session.

[32] The federal Government announced a package of measures on 4 May 2000. According to article 4 of Provisional Measure 2.027, rural property subject to occupation or unmotivated invasion due to agrarian or land conflict will not be inspected for agrarian reform purposes for two years following termination of the invasion.

[33] Monsalve Suárez, op. cit.

[34] Jean Ziegler, *"Schizophrénie des Nations Unies" Le monde diplomatique*, (Paris, November 2001).

[35] FAO, *Contemporary Thinking*, op cit., pp.2-3.

[36] See, for example, "Land for those who work it, not just for those who can buy it", Final declaration of the international seminar on the negative impacts of World Bank market-based land reform policy, April 2002; http://www.foodfirst.org/progs/global/trade/worldbankseminar.html.

[37] See E/CN.4/2002/58/Add.1.

[38] United Nations Conference on Trade and Development report TD/B/COM.1/27.

[39] See http://europa.eu.int/comm/agriculture/external/wto/press/usfarmbill.pdf.

[40] See A/56/210.

[41] See Régis Debray and Jean Ziegler, *Il s'agit de ne pas se rendre* (Paris, Éditions Arléa, 1994).

[47] "The liberty of the weak is the glory of the powerful", Alphonse de Lamartine, *Meditations Poetiques* (Paris, 1834).